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October 18, 1996

**VIA FACSIMILE AND ORIGINAL
BY U.S. MAIL**

James L. Morgan
Office of Attorney General
State of Illinois
Office of Attorney General
500 S. Second Street
Springfield, Illinois 62706

Re: United States and State of Illinois v. Village of Sauget --
Proposed Agreed Motion for Modification to Consent
Decree for Year-Round Disinfection Exemption

Dear Mr. Morgan:

The Village of Sauget regrets that based on the responses contained in your letter dated August 23, 1996, it was not possible to resolve this matter in sufficient time for the Village to modify the Consent Decree and to realize the benefits of the disinfection exemption for 1996. However, because the Village does believe that the exemption is properly applicable here, we have decided to respond to your letter so that perhaps this matter can be resolved before the next disinfection season in 1997. We request that the State consider the following responses which address the concerns set forth in your letter. Hence, although time is not of the essence at this juncture, the Village does request that the State revisit the issue of the proposed disinfection exemption based on the additional information set forth below and provide us with its response.

1. Lack of Downstream Impact from ABRTF Fecal Coliform Discharges

The first concern expressed in your letter is that the absence of downstream water data from the one-mile reach which the Illinois EPA has characterized as "unprotected" does not allow a determination as to whether Sauget's discharge will cause or contribute to exceedances of the 35 Ill. Adm. Code 302.209 or 302.306 standards. We do not understand why such data is necessary given that the modeling, which was based on instream data, showed that the general use water quality standards would be met downstream of the unprotected waters.

35 Ill. Adm. Code 302.209 provides a fecal coliform water quality standard applicable only to "protected waters". Section 302.209(a) goes on to define "protected waters" as meeting one or both of the following conditions:

- 1) presently support or have the physical characteristics to support primary contact;
- 2) flow through or adjacent to parks or residential areas.

As noted in your letter, the subject downstream reach of the Mississippi River has been characterized as unprotected. This characterization is appropriate because this downstream reach of the River does not satisfy the conditions of Section 302.209. This area of the River has current too fast for safe swimming, the barge traffic makes it unsafe for swimming, and it consequently has not been used for swimming (a fact confirmed by a 1988 study of this stretch of the River performed by the Village of Sauget and submitted to the Illinois EPA). In addition, land use along this stretch of the river is commercial and industrial. The river does not flow through or adjacent to parks or residential areas.

It is important to recognize that the ABRTF has installed and is operating a high rate diffuser on its outfall to the Mississippi River which achieves rapid mixing and dilution of its effluent and minimizes the impact of the effluent in the River. The previously conducted Diffuser Performance Study, a voluminous report which has been submitted and reviewed by the Illinois EPA, fully documents the effectiveness of the diffuser and included instream sampling of the River in the vicinity downstream of the ABRTF outfall. That study measured FAD dispersion at 2,000 feet downstream of the ABRTF outfall during 7Q10 flow as 291:1. The geometric mean of the coliform concentration in the unchlorinated American Bottoms plant effluent during the summer disinfection season is 39,000 MPN/100 ml. This mean was based on 424 individual daily measurements of the ABRTF discharge from the period of May 1993 to July 8, 1995. Hence, under a year-round exemption from disinfection, the coliform concentration during the "summer" months due to the ABRTF discharge at 2,000 feet downstream would be 39,000 MPN/100 ml divided by 291 or only 134 MPN/100 ml. This is well below the general use fecal coliform water quality standards. Hence, well upstream of the point at which those standards apply, the ABRTF bacteria discharge has been reduced to a level significantly below that standard. We submit that this data, which includes instream data, shows that the ABRTF discharge will not cause downstream waters to exceed the applicable water quality standards, consistent with the exemption requirements of 35 Ill. Adm. Code 304.121.

In addition, in this instance, it was the Illinois EPA itself that conducted the required die-off model to determine whether or not the ABRTF discharge met the requirements for the year-round exemption. The Illinois EPA has stated that the die-off model results showed that the bacteria originating in the ABRTF effluent would be reduced to 200 per 100 ml before leaving the unprotected waters area of the River. As stated in the applicable regulations at 35 Ill. Adm. Code 378.301 (c), the modeling is supplemented with additional stream-specific information as necessary to demonstrate compliance with fecal coliform water quality standards.

The Diffuser Performance Study certainly provided additional stream-specific information. We submit that the State has not identified why the information on which the IEPA conducted the required modeling was not sufficient to meet the requirements of section 378.301. We cannot discern what stream data the State believes was missing and why it was "necessary" for conducting the required modeling. Accordingly, we are not able to provide any additional response at this time. Hopefully, the above information is sufficient to address the State's concern. If not, please provide more specific information as to what stream data the State contends is "necessary" within the meaning of section 378.301 and why. We can then supplement this response as appropriate.

2. Request for Quantification of Projected Rate Reduction

This concern appears to stem from some misunderstanding of our prior communications because the Village has not based its request for a year-round reduction on any sort of rate reduction. Similarly, we do not interpret the applicable regulations to condition the granting of a year-round exemption upon any rate reduction. It is true that the operating costs of the ABRTF will no longer include the seasonal costs of disinfection under a year-round exemption, which we have previously stated are approximately \$300,000. If these costs are not incurred, it provides the Village with an ability to absorb other cost increases on other operating needs or unexpected costs to this extent before there would be any need to increase existing user rates. Because the disinfection costs are part of the total ABRTF costs paid for by both residential and industrial users, we are particularly interested in protecting our residential users from future rate increases. We are keenly aware that many of them already believe that the residential user rates are too high. Pursuing regulatory exemptions like this one, for which we believe we have made a clear showing of eligibility, is part of our overall effort to minimize costs for all of our users. Beyond this, we cannot further quantify the economic benefits to be realized from the granting of this exemption. We submit, however, that such a showing would go beyond the scope of the applicable regulatory requirements here. If we are incorrect, please identify for us the statutory or regulatory provision regarding the granting of year-round disinfection exemptions which requires such a showing and we will review it further.

3. Other Disinfection Technology

We are confused by this concern. It is not our understanding that the conditions for approving a year-round disinfection exemption require an evaluation of other disinfection technology or any showing regarding the feasibility or cost-effectiveness of other technologies. Accordingly, the Village did not conduct such an evaluation. Once again, if you will identify for us the statutory or regulatory provision relating to the performance of such an evaluation, we will review this matter further. In the absence of such a requirement, we would ask the State to reconsider the basis for this expressed concern.

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4. Inability to Locate United States Geological Survey Report

The United States Geological Survey Report is quite voluminous as it addresses several segments of the Mississippi River. Based on a telephone call with Lisa Cherup of the Department of Justice, whom I believe you know, I obtained the following information for you as to how the State may obtain a copy of this report. The correct title of the report is "Contaminants in the Mississippi River, 1987-92", U.S. Geological Survey, Circular 1133. You can obtain a copy by mailing a written request to:

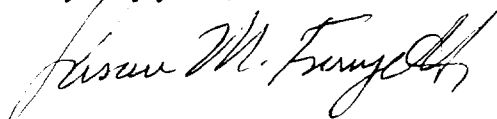
U.S. Geological Survey
P.O. Box 25286
Denver Federal Center
Denver, Colorado 80225

Alternatively, the report is available on the World Wide Web to review. It is on the U.S. Geological Survey's Home Page . That address is:
[urlhttp://www.usgs.gov/public/press/public_affairs/press_releases/pr106m.html](http://www.usgs.gov/public/press/public_affairs/press_releases/pr106m.html)

Finally, the Illinois EPA's water quality standards group in Springfield may have a copy available for review at its offices. If you are willing to accept our view of excerpts of interest from the report, we would be happy to copy those pages dealing with the fecal coliform levels in the general area of the Mississippi River into which the ABRTF discharges and send them to you.

We hope that you will determine we have sufficiently addressed the State's concerns and that you will revisit the issue of the proposed disinfection exemption. Once again, please contact me to relay the State's response to this submittal.

Very truly yours,



Susan M. Franzetti
Counsel for the Village of Sauget

SMF:sf

cc: Lisa A. Cherup, U.S. Department of Justice
Tom Martin, U.S. Environmental Protection Agency, Region V
Bruce Carlson, Illinois Environmental Protection Agency
Harold G. Baker, Jr., Village Attorney
George S. Schillinger, General Manager, ABRWTF

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